

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:12-cr-296

v.

HON. JANET T. NEFF

DAVID LOUIS LEE,

Defendant.

MEMORANDUM OPINION AND ORDER

Defendant David Louis Lee has filed a motion for modification or reduction of sentence (Dkt 173) pursuant to 18 U.S.C. §3582(c)(2) on the basis of Amendment 782 of the United States Sentencing Guidelines, made retroactive by the Sentencing Commission.

Section 3582(c)(2) permits a court to reduce the term of imprisonment of a defendant who has been sentenced based on a sentencing range that has subsequently been lowered by the Sentencing Commission. 18 U.S.C. § 3582(c)(2). Amendment 782 of the United States Sentencing Guidelines reduced by two levels the offense levels assigned to the quantities that trigger the statutory mandatory minimum penalties in U.S.S.G. §§ 2D1.1 and 2D1.11. These modifications were made retroactive effective November 1, 2014. U.S.S.G. § 1B1.10.

However, the defendant is ineligible for consideration of modification of sentence (Dkt 179), because defendant's sentence was based upon the defendant's status as a career offender and a departure made pursuant to §5K1.1 of the United States Sentencing Guidelines. Counsel for defendant has filed a response (Dkt 182) to the report of eligibility and preserves this issue for future consideration should the law change.

Therefore, IT IS HEREBY ORDERED that Defendant's motion for modification of sentence (Dkt 173) pursuant to 18 U.S.C. § 3582(c)(2) is DENIED.

DATED: January 14, 2015

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge